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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

LONNIE J. PHILPOT,

Defendant and Appellant.

D074349

(Super. Ct. No. SCS283646)

APPEAL from a judgment of the Superior Court of San Diego County, Dwayne K. Moring, Judge. Affirmed.

Stephen M. Hinkle, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

A jury convicted Lonnie J. Philpot of attempted murder and other offenses based on his shooting a gun multiple times at close range into a parked vehicle occupied by two people. He appeals from the judgment entered after this court remanded the case for

resentencing so that the trial court could consider whether to strike or dismiss his firearm enhancements. (Pen. Code, §§ 12022.5, subd. (c), 12022.53, subd. (h).)¹ Philpot's appellate counsel has filed a brief in accordance with *People v. Wende* (1979) 25 Cal.3d 436.

FACTUAL AND PROCEDURAL BACKGROUND

The facts underlying Philpot's convictions are described in *People v. Philpot* (Apr. 10, 2018, D071726) [nonpub. opn.], pages 3-7 (*Philpot I*), and we need not recount them here. The jury convicted him of one count of attempted murder (§§ 187, subd. (a), 664), one count of shooting into an occupied motor vehicle (§ 246), and two counts of assault with a firearm (§ 245, subd. (a)(2)). The jury also found true the allegations that Philpot personally used a firearm in the commission of the attempted murder and the assaults with a firearm (§ 12022.5, subd. (a)), and that he personally discharged a firearm in the commission of the attempted murder (§ 12022.53, subd. (c)). The trial court sentenced him to a prison term of seven years for the attempted murder, plus an additional 20 years for the personal discharge of a firearm enhancement, and an additional one-year term for one of the counts of assault with a firearm. The court stayed the sentences on the remaining counts pursuant to section 654. (*Philpot I*, at pp. 7-8.)

On appeal, this court affirmed Philpot's convictions, but vacated his sentence and remanded the case for resentencing to allow the trial court to consider whether the

¹ Further unspecified statutory references are to the Penal Code.

firearm enhancements under sections 12022.5 and 12022.53 should be stricken.

(*Philpot I*, *supra*, D071726 at p. 35.)

On remand, the trial court imposed the same sentence on Philpot as before, with an updated credits calculation. The court acknowledged its discretion to strike or impose the firearm enhancements and declined to strike the section 12022.53, subdivision (c) enhancement for reasons stated on the record.

Philpot again appeals. Philpot's appellate counsel has filed a brief indicating that he has been unable to identify any arguable issues and instead asks this court to review the record for error as mandated by *Wende*. Pursuant to *Anders v. California* (1967) 386 U.S. 738, the brief lists one potential issue to assist us in our independent review of the record: "Did the trial court commit an abuse of discretion in imposing the more serious section 12022.53, subdivision (c) gun enhancement or failing to strike either or both gun enhancements?"

This court invited Philpot to file a brief on his own behalf, and he did not respond.

DISCUSSION

We have reviewed the record in accordance with *Wende* and *Anders* and have not found any reasonably arguable appellate issues. Philpot has been represented by competent counsel on appeal.

DISPOSITION

The judgment is affirmed.

AARON, J.

WE CONCUR:

HUFFMAN, Acting P. J.

NARES, J.